

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

AIP ACQUISITION LLC, ) Civil Action  
)  
Plaintiff, )  
)  
v. )  
)  
IBASIS, INC., )  
)  
Defendant. ) No. 12-616 (GMS)

- - -

Wilmington, Delaware  
Friday, January 11, 2013  
10:15 a.m.  
Teleconference

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

RICHARD K. HERRMANN, ESQ.

Morris James LLP

-and-

FRANCISCO A. VILLEGAS, ESQ.,

KAREN H. BROMBERG, ESQ., and

DAMIR CEFO, ESQ.

Cohen & Gresser LLP

(New York, N.Y.)

Counsel for Plaintiff

JACK B. BLUMENFELD, ESQ.

Morris Nichols Arsht & Tunnell LLP

-and-

MATTHEW J. MOORE, ESQ., and

CLEMENT NAPLES, ESQ.

Latham & Watkins LLP

(Washington, D.C. and New York, N.Y.)

Counsel for Defendant

1 THE COURT: Good morning counsel. Counsel, who  
2 is appearing for the plaintiff today?

3 MR. HERRMANN: Good morning Your Honor. It's  
4 Richard Herrmann. I have with me Francisco Villegas from  
5 the law firm of Cohen & Gresser. He has a couple folks with  
6 him that I would like him to introduce to the Court

7 MR. VILLEGAS: Good morning, Your Honor.  
8 Francisco Villegas for AIP as plaintiff. Also with me is  
9 Karen Bromberg and Damir Cefo of Cohen & Gresser.

10 MS. BROMBERG: Good morning, Your Honor.

11 THE COURT: Good morning.

12 For the other side?

13 MR. BLUMENFELD: Good morning, Your Honor. Jack  
14 Blumenfeld for iBasis, along with Matt Moore and Clem Naples  
15 from Latham & Watkins.

16 THE COURT: Good morning. You don't have the  
17 flu, do you, Mr. Blumenfeld?

18 MR. BLUMENFELD: I am just getting over a cold,  
19 Your Honor. I made the mistake of sitting on an airplane  
20 for six hours last night.

21 THE COURT: I am glad we are on the phone and  
22 not in person.

23 I don't mean to make light of your condition.

24 MR. BLUMENFELD: I think the people on the plane  
25 would have felt that way.

1 THE COURT: Counsel, let's go to Exhibit A,  
2 right away. I am not going to detain you long at all.

3 Plaintiff, if you would prepare a case  
4 management order, consistent with my form of order, and get  
5 it over by the 18th to the other side, so I can sign it and  
6 docket it, that would be great. Is that okay?

7 UNIDENTIFIED SPEAKER: Yes Your Honor.

8 THE COURT: I am going to adopt the dates,  
9 assuming they are still in play, that you both proposed  
10 jointly in Exhibit A. Are the dates still good?

11 MR. VILLEGAS: Yes, Your Honor. If I may, I  
12 would like to point out, bring to the Court's attention that  
13 there is a related case, AIG Acquisitions versus Level 3  
14 Communications, 12-CV-617.

15 THE COURT: Yes, I am aware of that. Is it the  
16 desire of counsel to enter the same schedule as to that  
17 matter as well?

18 MR. VILLEGAS: No.

19 THE COURT: I didn't think so.

20 MR. VILLEGAS: No, not yet. We believe it would  
21 make sense to have a four-way schedule with Level 3 and  
22 iBasis. But Level 3 is not here on this call this morning.

23 THE COURT: I didn't think so. See, I don't  
24 initiate this process, counsel. So I did notice that when I  
25 picked up the file only last evening. There is nothing much

1       that I can do about it today. I imagined that Level 3  
2       unfortunately is not on the call.

3               Let me ask you this, from both sides. These are  
4       two separate cases, related but separate nonetheless.  
5       Right?

6               MR. BLUMENFELD: Yes, they are separate, Judge.

7               THE COURT: Does anybody wish to, on the line,  
8       or think it appropriate, to have the 617 matter track the  
9       schedule that we are about to establish for this 12-616  
10      matter?

11              MS. BROMBERG: We think its makes sense, from  
12      the perspective even of a Markman hearing. But we would  
13      look to Your Honor for guidance on that.

14              THE COURT: Does the other side concur in that  
15      view?

16              MR. VILLEGAS: Yes, AIP concurs in that view.  
17      It might be convenient for the Court if we could have one  
18      Markman.

19              THE COURT: Absolutely.

20              What about the eventual, should it come to pass,  
21      trial of the matter? Is it the view that these cases should  
22      be tried separately or together?

23              UNIDENTIFIED SPEAKER: It is the view of the  
24      defendants that they should be tried separately.

25              MR. VILLEGAS: And we agree.

1                   THE COURT:    So the dates that we would discuss  
2                   might be applicable to the 617 matter, except for the  
3                   pretrial order, the pretrial conference, and the trial date?  
4                   Yes?   No?   Maybe?

5                   MS. BROMBERG:   Yes.

6                   UNIDENTIFIED SPEAKER:   Yes.

7                   THE COURT:    I can issue an order in the 617  
8                   case, a case management order, I think, and afford the  
9                   non-appearing party today the opportunity to be heard  
10                  further by way of an additional teleconference, should it  
11                  become necessary.

12                  UNIDENTIFIED SPEAKER:   That would be great, Your  
13                  Honor.

14                  THE COURT:    Let's do that.   I will issue an  
15                  order in that case today, stating exactly that, and  
16                  affording them maybe seven business days or something like  
17                  that in order to be heard on any of the dates that I set.

18                  Does that seem to make sense to the parties on  
19                  the line?

20                  MS. BROMBERG:   Makes perfect sense.

21                  UNIDENTIFIED SPEAKER:   Yes, Your Honor.

22                  THE COURT:    Let's then go through real quick  
23                  Exhibit A.   I am going to adopt all of the dates and fill in  
24                  the blanks as follows, and the process you have suggested as  
25                  well, when you are going to provide information upon advice

1 of counsel and things of that nature, the protective order.

2 Our Markman will occur on January the 16th of  
3 2014 commencing at 9:30, with both cases together, the 617  
4 and 616. How much time do you think we might need? Any  
5 ability to anticipate that?

6 UNIDENTIFIED SPEAKER: It is a little hard to  
7 tell right now, not having gone through any claim  
8 construction discovery or really getting the terms.

9 THE COURT: Any sense of how many claims are  
10 being asserted here?

11 MR. VILLEGAS: There is five patents.

12 THE COURT: Let's do this. I will set it down  
13 for a day. I am not going to give you any more than a day  
14 anyway. I don't take evidence, generally, at Markmans,  
15 unless you prevail upon me otherwise. And it hasn't  
16 happened yet.

17 I will say for the record, I will consider  
18 requests to take extrinsic evidence beyond dictionaries and  
19 that kind of thing.

20 Let's set it down for January 16th at 9:30 for a  
21 day.

22 The pretrial order will be due in chambers by  
23 the close of business on October the 3rd of 2014.

24 We will convene a final pretrial conference here  
25 in Wilmington commencing at 10:00 o'clock on November the

1 5th.

2 We will set it down for the beginning of a  
3 ten-day jury trial on December the 1st.

4 Any problem with any of those dates, counsel?

5 UNIDENTIFIED SPEAKER: No, Your Honor.

6 UNIDENTIFIED SPEAKER: No, Your Honor.

7 THE COURT: Counsel, that completes my agenda.

8 Let me open the floor to see if you need to talk to me about  
9 anything else.

10 MR. VILLEGAS: AIP has nothing else, Your Honor.

11 UNIDENTIFIED SPEAKER: IBasis has nothing else.

12 THE COURT: I will leave it to Delaware counsel  
13 to explain the important parts of the process, like how to  
14 raise discovery disputes and the like. Okay?

15 I will issue that order in the 617 case. And  
16 hopefully I won't have to get at least one of the sides on  
17 the phone today or all of you back on the phone, because I  
18 shouldn't imagine it would be a problem. All I need to do,  
19 as I understand it, from my list of things to do, is to  
20 provide the other side -- and we can probably do this  
21 informally -- with the trial date and the pretrial  
22 conference and the pretrial order due date.

23 Same number of patents in the other case?

24 UNIDENTIFIED SPEAKER: Yes, sir.

25 THE COURT: We would need the same amount time

1 to try it, then.

2 Counsel, do you wish referral to the Magistrate  
3 Judge system here for possible ADR, or not?

4 MS. BROMBERG: The plaintiff is certainly open  
5 to that, if the defendants are interested. It only makes  
6 sense if all the parties are interested in it.

7 THE COURT: I agree with that.

8 UNIDENTIFIED SPEAKER: Defendants have no  
9 objection. We are interested.

10 THE COURT: There is some generic language on  
11 the website form. Just include that. You don't need to  
12 include a specific Magistrate Judge because they are now  
13 making those assignments among themselves. They will reach  
14 out to you not right away, and it's they who need to reach  
15 out to you, not you to them, and probably once you are a  
16 good distance down the discovery road. Okay?

17 MS. BROMBERG: Perfect.

18 THE COURT: Counsel, have a good weekend. Take  
19 care.

20 (Conference concluded at 10:28 a.m.)

21 - - -

22 Reporter: Kevin Maurer  
23  
24  
25